

APPEAL NO. 030743
FILED APRIL 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 20, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury of _____, does extend to and include an injury to the right wrist in the form of carpal tunnel syndrome (CTS), and to the right elbow in the form of ulnar nerve entrapment; that the respondent (carrier) waived the right to contest compensability of the claimed injury by not paying or disputing the claim within seven days in accordance with Section 409.021 and 409.022; and that the claimant had disability from October 1 and continuing through December 28, 2002. The carrier appealed these issues, arguing that it did not waive the right to contest compensability as the claimant did not sustain an injury on the date in question. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he injured his right wrist and right elbow on _____, in the course and scope of his employment. A medical report dated October 14, 2002, reflects that the claimant sought treatment with Dr. MO and he diagnosed the claimant with "strained muscles in the forearm and upper arm." A medical report dated December 4, 2002, reflects that Dr. R performed an electromyogram (EMG) test and diagnosed the claimant with "right ulnar nerve injury or entrapment" and "right [CTS]." The Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) form reflects that the carrier first received written notice of the claimed injury on October 11, 2002, and contested compensability on October 23, 2002.

The carrier contends on appeal that the hearing officer erred in determining that the carrier waived the right to contest compensability because the claimant did not sustain an injury on the date in question. In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Texas Supreme Court determined that under Sections 409.021 and 409.022, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability. On August 30, 2002, the Texas Supreme Court denied the motion for rehearing in the Downs case. Thus, the Downs decision became final. See Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002.

In Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), the court held that "if a hearing officer determines that there is no

injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury, which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. When a carrier waives its right to contest compensability of the injury, the injury becomes compensable as a matter of law, provided that there is physical harm or damage to the body, and the carrier is liable for workers' compensation benefits. Texas Workers' Compensation Commission Appeal No. 023017, decided January 27, 2003.

The hearing officer specifically found that "[p]ursuant to an [EMG] test on December 4, 2002, the Claimant has damage or harm in his right wrist in the form of [CTS] and in his right elbow in the form of ulnar nerve entrapment." An EMG taken after the date of the claimed injury showed evidence of an injury as defined in Section 401.011(26). This finding is supported by sufficient evidence. However, the hearing officer also specifically found that "[o]n _____, the Claimant did not sustain damage or harm to the physical structure of his body, to-wit: the right wrist in the form of [CTS] or the right elbow in the form of ulnar nerve entrapment." The carrier argues that this finding raises an application of Williamson. In Texas Workers' Compensation Appeal No. 000604, decided May 10, 2000, the Appeals Panel stated:

We have interpreted Williamson to mean that a carrier's failure to timely dispute does not create an injury only when there is no injury. If the claimant has established a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a TWCC-21 has not been timely and properly filed.

This case is distinguishable from Williamson, because in the instant case the hearing officer's Finding of Fact No. 5 specifically states that he found that the claimant sustained damage or harm to the physical structure of his body. The hearing officer's finding that no damage or harm was sustained on _____, does not necessitate reversal of the conclusion that the carrier waived the right to contest compensability of the claimed injury. We do not read Williamson to require proof of damage or harm on the specific date alleged.

Further, the carrier cites Texas Workers' Compensation Commission Appeal No. 010274, decided March 16, 2001, to support its argument that there must be a finding that the claimant sustained damage or harm to the physical structure of his body on the alleged date of injury. In Appeal No. 010274, the claimant had subsequent mental trauma injuries that arose after his alleged date of injury because of traumatic events in his life, including marital difficulties and the termination of his employment. In the

instant case, although the claimant's condition was diagnosed at a later time from his date of injury, the hearing officer implicitly found that the claimant sustained damage or harm to his right wrist in the form [CTS] and in his right elbow in the form of ulnar nerve entrapment, prior to the date of injury.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge